IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 561 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MAHAVIR FULCHAND JAIN

Appearance:

1. Criminal Revision Application No. 561 of 2001
MR BD DESAI PUBLIC PROSECUTOR for Petitioners No. 1-2
MR KR JANI for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/01/2002

ORAL JUDGEMENT

#. The State has preferred this Revision Application under Section 397 read with 401 of the Criminal Procedure Code, 1973, challenging the judgment and order dated 14.9.2001 in Criminal Appeal No.16/2001

recorded by the learned Principal City Civil & Sessions Judge, Ahmedabad City.

#. It seems that an order was passed by the learned Additional Collector, Ahmedabad City on 5.10.2000 under which a tanker of the contesting respondent was ordered to be confiscated with the State. The said order was taken in appeal by the contesting respondent before the City Sessions Judge, who heard the appeal and disposed of the same by allowing the same. The learned Judge also directed that the tanker seized from the possession of the respondent be returned to him.

#. The reason for arriving at the aforesaid decision was that the order in question was passed by the learned Additional Collector and not by the Collector. The learned Judge found that under the provisions of Essential Commodities Act, 1955 the power vested in the Collector and not in any other officer and, therefore, Additional Collector could not have exercised the power of Collector while confiscating the said tanker of the respondent.

#. It has been contended here that the learned Judge has committed an error in the eye of law in arriving at the aforesaid finding. It is also alleged that under the provision of the Essential Commodities Act, 1955 even the Additional Collectors are empowered to exercise power under the said Act and, therefore, the said aspect has not been considered by the learned Judge and therefore the order of the learned Judge is illegal and deserves to be set aside.

#. During the course of hearing it was found that the definition of Collector has been given in sub-section (ii-a) of Section-2 of the said Act which reads as follows :-

> ""Collector" includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorised by the Collector to perform the functions and exercise the power of the Collector under this Act."

#. On going through the aforesaid definition of the word "Collector" it is clear that Additional Collector is included in the definition of Collector which clearly means that the Additional Collector is also empowered to act as Collector under the said Act. Therefore, the order passed by the Additional Collector cannot be treated to be illegal and it cannot be said that the

order is without jurisdiction. In that view of the matter, this finding of the learned trial Judge is against the provision of law and, therefore, deserves to be set aside.

#. So far as the factual aspects are concerned, the learned Judge has not decided the matter on fact and, therefore, it is not necessary for this Court also to consider and decide the factual aspect of the case.

#. In above view of the matter, when the order of the learned Judge is illegal it is required to be quashed and set aside by allowing this Criminal Revision Application.

#. For the foregoing reasons, this Criminal Revision Application is allowed. The judgment and order of the learned Judge in Criminal Appeal No.16/2001 are quashed and set aside. The matter is remanded back to the City Sessions Court at Ahmedabad for deciding the aforesaid appeal afresh on merits according to law, without being influenced by the previous judgment and order of the learned Judge, Rule is made absolute to the above extent.

kks (D.P. BUCH, J.)